IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.81 OF 1999
IN
WRIT PETITION NO.287 OF 1995

Hindustan Lever Limited
having its Registered Office
at 165/166, Backbay Reclamation,
Mumbai - 400 020 and its Factory
at Haji Bunder, Sewree,
Bombay - 400 015. .. Appellant.

V/s.

1. Hindustam Lever Employees
Union, having its Office
at C/o. Hindustan Lever
Ltd., Haji Bunder, Sewree,
Mumbai - 400 015.

2. B.S. Bhadange,
Member, Industrial Court,
Arun Chambers, Tardeo,
Mumbai - 400 034. .. Respondents.

Mr.P.K. Rele, Senior counsel with Mr.Rajesh Rele and Mr.Vinod Tayde i/b. Mr.Piyush Shah for the appellant.

Mr.K.K. Singhvi, Senior counsel with Ms.Meena Doshi i/b. Mr. K.S. Bapat for respondent No.1.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 20/21 DECEMBER, 2004.

ORAL JUDGMENT : (Per R.M. Lodha, J.)

. The first respondent Hindustan Lever Employees Union (for short 'the Union') filed a complaint of unfair labour practice against the appellant (for short 'the employer') under item 9 of

Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act of 1971'). The complaint was resisted by the employer. The Industrial Court, Bombay after recording the evidence and hearing the parties allowed the complaint vide its order dated 5th January, 1995. The operative order reads thus :

> "i) Complaint is allowed.
>
> ii) It is hereby declared that the Respondents have committed an unfair labour practice under item 9 of Sch. IV of MRTU & PULP Act, 1971. They should cease and desist from engaging in the said unfair labour practice.
>
> iii) It is further declared that discontinuation of lines in Hard Soaps Department, a Section of Toilet Soaps Departments, Printing Department and the closure of E.P.C. (Machine Building) Department and the Sulphanation Department, is illegal.
>
> iv) The Respondent's are further directed to not to close down the Departments or redeploy the workmen without following due process of law.
>
> . No order as to costs."

2. Upset by the order of the Industrial Court, the employer filed writ petition which came to be dismissed by the learned single Judge vide his judgment dated 3rd/4th December, 1998. The employer has come up in appeal.

3. The learned senior counsel for the employer and the union argued the matter extensively. They took us through pleadings, the evidence, the judgment of the Industrial Court, the judgment of the learned single Judge and also the large number of authorities. Collectively they consumed more than 10 hours of Court time. Was it necessary ? We leave it to the learned senior counsel to ponder.

4. On the basis of the arguments advanced before us by the learned senior counsel, the points that emerge for our consideration are: (one) whether the learned Single Judge committed illegality in permitting the union to raise the plea that individual settlements entered into between the employer and the individual workman were not legal; (two) whether the setlements entered into between the employer and the individual workman were legal and binding; (three) whether the action of the employer in discontinuation of Hard soaps department, Sulphanation department, packaging department etc. and the redeployment of the employees and non-payment of incentives amounted to change of their service conditions covered by items 1, 10 and 11 of the fourth schedule of ID Act for which notice under

section 9A was necessarily required; and (four) whether para 3 of the operative order of the Industrial Court was warranted and legally sustainable.

5. Mr.P.K. Rele, the learned senior counsel for the employer relied upon large number of authorities viz., (i) Workmen of M/s.P.M. Moodaliar & Sons V/s. The Management of M/s.P.M. Moodaliar & Sons & Another (1975 LIC 1135), (ii) Workmen of Firestone Tyre & Rubber Co. of India (P) Limited V/s. The Firestone Tyre & Rubber Co. (1976 I LLJ 493), (iii) M/s. Ameteep Machine Tools V/s. Labour Court, Haryana & Another (1980 [Supp] SCC 355), (iv) Federation of Small & Medium Industries & Another V/s. Their Workmen & Ors. (1972 LIC 1275), (v) Glass Division Kamgar Sangh & Another V/s. State of Maharashtra & Another (1998 II CLR 803), (vi) Hindustan Lever Limited V/s. Hindustan Lever Mazdoor Sabha (2001 I CLR 432), (vii) Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. V/s. The Management of Jorehaut Tea Co. Ltd (1980 II LLJ 124),(viii) Shankar Chakravarti V/s. Britannia Biscuit Co. Ltd. & Another (AIR 1970 SC 1652), (ix) JK Iron & Steel Co. Ltd. V/s. Iron & Steel Mazdoor Union & Another (1956 I LLJ 227), (x) S.S. Sharma &

Others V/s. Union of India & Others (1981 LIC 131), (xi) Northbroke Jute Co. Ltd. & Another V/s. Their workmen (1960 I LLJ 580), (xii) The workmen of the Food Corporation of India V/s. Food Corporation of India (AIR 1985 SC 670), (xiii) D. Macropolo & Co.(Pvt.) Ltd. V/s. Their Employees' Union & Others (1958 II LLJ 492), (xiv) M/s. Parry & Co. Ltd. V/s. P.C. Pal & Others (1970 II LLJ 429), (xv) Hindustan Lever Employyes' Union V/s. State of Maharashtra & Others (1989 II CLR 420), (xvi) Hindustan Lever Employees' Union V/s. State of Maharashtra & Others (1993 II CLR 847), (xvii) Hindustan Lever Ltd. V/s. Ram Mohan Ray & Others (1973 I LLJ 427), (xviii) Ghatge & Patil Concerns' Employees' Union V/s. Ghatge & Patil (Transports) Pvt. Ltd. & Another (1968 SC 503), (xix) Shanker Pandurang Jadhav & Others V/s. Vice Admiral, Flag Officer, Commanding-in-Chief & Others (1991[62] FLR 387), (xx) Gulf Air, Bombay V/s. S.M. Vaze, Member, Industrial Court & Others (1994 II CLR 292), (xxi) Shankar Prasad V/s. Lokmat Newspapers Pvt.Ltd., Nagpur (1997 I LLJ 195), (xxii) Hindustan Lever Ltd. V/s. State of U.P. & Others (2000 II CLR 814), (xxiii) J.K. Cotton Spg. & Wvg. Mills Co. Ltd., Kanpur V/s. State of U.P. & Others (1990 II CLR 542), (xxiv) Alarsin and Alarsin Marketing Employees'

Union V/s. Alarsin Pharmaceuticals and Alarsin Marketing Pvt. Ltd. & Another (2004 (III) LLJ 870) and (xxv) unreported judgment of the learned single Judge of the Madras High Court in Writ Petition No.1471 of 1999 and connected writ petition in the case of Management of Binny Limited V/s. The Presiding Officer, Industrial Tribunal, Chennai decided on February 29, 2000.

6. Mr.K.K. Singhvi, the learned senior counsel for the union relied upon the following judgments :

. (i) Northbrook Jute Company Ltd and Another V/s. Their Workmen (1960 I LLT 580), (ii) Lokmat Newspapers Limited V/s. Shankarprasad (1999 II CLR 433), (iii) Tata Iron & Steel Co. Ltd. V/s. Their Workmen (1972 II LLJ 259), (iv) P.V. Mani V/s. Union of India & Others (AIR 1986 Kerala 86), (v) P. Virudhchalam & Others V/s. Management of Lotus Mils & Another (1998 I CLR 1), (vi) Ram Prasad Vishwakarma V/s. Chairman Industrial Tribunal (AIR 1961 SC 857), (vii) Central Provinces Transport Services Ltd., V/s. Raghunath Gopal (AIR 1957 SC 104), (viii) Watern India Match Co. Ltd. V/s. Its Workman (1973 (II) LLJ 403), (ix) Brooke Bond India Limited V/s.

Workmen (1981 III LLJ 184 SC), (x) Raza Buland Sugar Co. Ltd. V/s. Their Workmen (1972 II LLJ 35), (xi) Commissioner of Income Tax V/s. Holman Climan Mfg. Ltd., Calcutta (1991 LIC 2195), (xii) Ganesh Chandra Jha V/s. Steel Authority Ltd. (1992 LIC 780), (xiii) New India Flour Mills V/s. Industrial Tribunal West Bengal & Others (1963 I LLJ 745), (xiv) Workmen of Meenakshi Mills Ltd. V/s. Meenakshi Mills Ltd. & Another (1992 I CLR 1010), (xv) Food Corporation of India Workers Union V/s. Food Corporation of India & Another (1996 (9) SCC 439), (xvi) Workmen of M/s.Delhi Cloth General Mills Ltd. V/s. The management of M/s. Delhi Cloth and General Mills (1970 LAB IC 1407), (xvii) The Bata Shoe Co. (P) Ltd. V/s. D.N. Ganguly & Others (AIR 1961 1158) and (xviii) Tarini Kamal Pandit & Others V/s. Prafulla Kumar Chatterjee [(1979) 3 SCC 280). He also relied upon the judgments in the case of Ram Mohan Ray (supra), Workmen of Food Corporation of India (supra) and Shanker Pandurang Jadhav (supra) relied upon by Mr.P.K. Rele.

7. We shall now refer to the necessary facts. The Union filed the complaint being complaint (ULP) No.855 of 1989 against the employer under item 9 of Schedule IV of MRTU & PULP Act 1971 before the

Industrial Court, Maharashtra, Bombay in the month of July 1989. The complaint alleged that the employer had committed unfair labour practice on 22nd June 1989 and were continuing to engage in unfair labour practice under item 9 of Schedule IV of the Act of 1971. The employer has a factory at Sewree and employ 3000 employees. The Sewree factory consists of number of departments viz; Vanaspati plant, the soapary department, the hard soaps department, the toilet soaps department the sulphenation plant, the packaging department etc. The employer declared the lock out of its employees at the Sewree factory on and from 22nd June 1988. During the lock out period the employer made number of demands upon the Union. By their notice dated 22nd June 1989 the employer lifted the lock out and permitted all the employees to report back for their normal duties. According to the Union, on resumption of their duties by the workmen, the Union found that the employer has closed down several departments or several parts of the departments. In the Hard Soaps Department where hard soaps under the brand name of ‘Sunlight’ and ‘Lifebuoy’ were being manufactured, three lines of hard soaps and three lines of toilet soaps machines in Hard Soap department were stopped, thus, closing down six lines in the Hard soap department. It was

also found that the employer had closed down two lines of toilet soaps department and dismantled three Rose Wrapping Machines, three Jone Stamper Machine, Mazzeni Machines 2 and 3, Conveyer Belt and T.S.M. Machine. The employer had also closed down the printing department employing about 18 workmen. The EPCC (Machine Building Department), Telcum Department and Sulphanation Plant were also closed. According to the Union, the closure of these departments had resulted in extensive redeployment of workmen from one department to the other. The closing down of departments and redeployment of workmen amounted to rationalisation and the said rationalisation was likely to lead to retrenchment because of surplus workforce. The Union alleged in the complaint that the workmen working in certain departments were getting incentive wages. Now such workmen have been deployed to the departments and the places where there was no incentive payment. As a result of closure of departments and redeployment, the wages and allowances of the workmen have been adversely affected. The Union averred in the complaint that redeployment, re-classification and rationalisation were contrary to subsisting settlements. The closure of departments, rationalisation and reduction in wages and allowances are subject matters of Schedule

IV of the Industrial Disputes Act, 1947. The employer did not give any notice of change under Section 9A of the Industrial Disputes Act, 1947 and, therefore, the act of the employer in closing down the said departments or part of it was contrary to the provisions of law and illegal. The Union alleged that the workmen in skilled grades have been directed to perform semi skilled jobs and workmen requiring definite mental, physical and intellectual ability are required to do jobs inconsistent with the mental, physical and intellectual requirements as set out in the settlements. The Union, thus, in the complaint prayed that it be declared that the employer has engaged in unfair labour practice under item 9 of Schedule IV of the Act of 1971; that the employer be directed to cease and desist from engaging in unfair labour practice complained of; that the closure of a section of Hard soaps department, the printing department, talcum power and shampoo department, the E.P.C. (Machine Building) department and the Sulphanation department was illegal and the employer be directed not to close down departments or redeploy workmen save and except by following the provisions of law and in accord with the Standing Orders and the subsisting settlements.

8. The employer contested the complaint by filing written statement. According to the employer, the lock out of the Sewree plant was effected from 22nd June 1989. It became necessary due to continuous go-slow for about 17 months proceeding the lockout resulting in production loss of Rs.100 crores. After the imposition of lockout several meetings were called by the Labour Department of the Government of Maharashtra. Ultimately at the behest of the then Chief Minister Shri Sharad Pawar on 19th June, 1989 it was agreed by the Union and the Management that the workmen would lift the lockout on certain conditions. The employer submitted that the Union agreed to the conditions as discussed in this tripartite meeting and the terms were chalked out and the notice was put up on 22nd June 1989 together with the copy of the draft agreement under Section 2(p) of the Industrial Disputes Act, 1947 to be entered into with the individual workman/the Union as a pre-condition for lifting the lockout. The Union backed out and did not sign the agreement but the individual workmen signed the agreement. According to the employer as a pre-condition to the lifting of the lock out, it was absolutely necessary that the Union and its workmen agreed to redeployment to meet the business exigencies regarding existing and new

products as also to the introduction of new products/processes/technologies and improved system of work. The employer committed that such redeployment will not lead to any retrenchment of the workmen. The employer asserted that deployment in terms of clause 2 of the agreement was made and no workman was redeployed which was not commensurate with his skill and grade. The employer reiterated that no workman has been retrenched and that it will not retrench any workman in future. According to the employer, it was only in the interest of business exigencies and on the demand for the products and with a view to modernise and make the unit run viably it had become necessary to remove certain machinery and as such dismantling and removal of such machinery did not and does not constitute any unfair labour practice. The employer averred that the operations which became irrelevant in the present context keeping in view volume/technological changes/environment and commercial necessity, have been discontinued in order to run the unit viably. The employer denied that their said acts amounted to rationalisation. They also denied that the said rationalisation was likely to lead retrenchment in future and/or lead to surplus workforce. The employer submitted that the workmen had no vested

right to receive incentive wages as such, and, therefore, the Union cannot complain if the workmen were not earning their incentive wages more particularly in view of the clause of the settlement wherein the workmen agreed to get themselves redeployed. The employer denied that the closure of departments and redeployment, reclassification and rationalisation were contrary to the subsisting settlements. According to them, they have not done anything which required any notice to be given under Section 9A of the Industrial Disputes Act, 1947. They denied that the workmen have been asked to perform duties which were not consistent with their grades or classification. The employer submitted that the individual workman had entered into the settlement and they agreed redeployment as also for introducing new machinery and new method of working. The employer, thus, prayed that the complaint be dismissed.

9. On behalf of the Union, the affidavit of Bennet D'Costa in lieu of examination-in-chief was filed and he was cross-examined by the employer's advocate. On the other hand, on behalf of the employer the affidavit of Rajesh Kumar Lal, by way of examination-in-chief was filed. He was

cross-examined by the advocate for the Union.

10. The parties also produced large number of documents before the Industrial Court.

11. The Industrial Court considered the material and evidence before it and after hearing the advocates for the parties vide its Judgment dated 5th January 1995 held that the case was not a case of closure as explained and defined under the Industrial Disputes Act, but it was a case of rationalisation and re-organisation of the business. By closing some of the departments and by discontinuing some of the lines, service conditions of the employees were adversely affected and it was obligatory and necessary on the part of the employer to give notice under Section 9A of the Industrial Disputes Act which the employer failed to give. The Industrial Court also held that redeployment of the employees in other departments resulted in change of service conditions adversely affecting them. The Industrial Court came to the conclusion that the individual settlement arrived between the individual employee and the employer was of no help to the employer and did not take away the obligation on the part of the employer to give notice under Section 9A. The Industrial

Court, accordingly, allowed the complaint and declared that the employer had committed an unfair labour practice under item 9 of Schedule IV of MRTU & PULP Act, 1971 and they should cease and desist from engaging in the said unfair labour practice. The Industrial Court also declared that discontinuation of lines in Hard Soaps department, section of toilet soaps departments, printing department and the closure of E.P.C.(Machine Building) department and the Sulphanation department was illegal and directed the employer not to close down these departments or redeploy the workmen without following due process of law.

12. The employer filed the writ petition before this court and as noticed above, the said petition was dismissed. The learned Single Judge held that the individual settlement entered into between the employer and the employee was illegal. The learned Single Judge affirmed the order of the Industrial Court.

13. Now we turn to the points that arise for our consideration.

15. **Re: (one)**

. It is true that the Industrial Court did not go into the aspect whether the individual settlements were illegal and void. While defending the order of the Industrial Court, in opposition to the writ petition filed by the employer, the Union set up the case that individual settlements were void and illegal. Though the counsel for the employer objected to such contention being raised for the first time in the writ petition, the learned Single Judge found that question being a pure question of law, the parties could be permitted to address the Court on this aspect. We do not find any infirmity in the permission granted by the learned Single Judge. The legality and validity of the individual settlements was required to be seen in the light of the provisions contained in Sections 2(p), 2A, 18 and 36 of the Industrial Disputes Act, 1947 and Rule 62 of the Industrial Disputes (Bombay) Rules, 1957. No determination of facts was required. The facts pertaining to the individual settlements were already set out in the written statement filed by the employer. In the affidavit of Bennet D'Costa, the General Secretary of the union, it is stated that individual settlements are illegal, obtained under coercion, against the public policy and void. It

cannot be said that the employer was put to surprise on the face of the aforesaid case set up in the evidence of the Union. In the circumstances, therefore, the consideration of legality and validity of individual settlements by the learned Single Judge for the first time in the writ petition was not something to which serious objection could be raised. We, accordingly, overrule the objection of Mr.P.K.Rele that the learned Single Judge ought not to have granted permission to the Union to raise the plea of legality and validity of individual settlements in the writ petition.

15. **Re: (two)**

. The question of validity and legality of individual settlements has attained importance in the light of the defence of the employer that the controversial changes were effected in pursuance of individual settlements and, therefore, no notice under Section 9A was necessary.

16. Section 2(p) defines "settlement" thus:

> "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of

conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

17. Section 2(s) defines "workman" which reads thus:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 962 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

18. By virtue of Section 2A which was introduced in the ID Act with effect from 01.12.1965 provides that the dismissal etc. of an individual workman is to be deemed to be an industrial dispute. It reads thus:

> "2A. **Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.** - Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

19. Section 9A requires an employer to give notice in respect of any change in the conditions of service as provided therein. It reads thus:

> "9A. **Notice of change. -** No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b) within twenty-one days of giving such notice:
>
> Provided that no notice shall be required for effecting any such change -

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

20. Section 18 provides for the persons on whom settlements and awards are binding and it reads thus:

"18. **Persons on whom settlements and awards are binding. -** (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -

(a) all parties to the industrial dispute;

(b) all other parties summoned to

appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

21. Section 19 provides for a period of operation of settlements and awards.

22. Section 36 deals with the representation of parties and it reads thus:

"36. **Representation of parties.** - (1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by -

(a) any member of the executive or other office-bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office-bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office-bearer of any

> trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.
>
> (2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -
>
> (a) an officer of an association of employers of which he is a member;
>
> (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;
>
> (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.
>
> (3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a court.
>
> (4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

23. In exercise of the powers conferred by Section 38 of the Industrial Disputes Act, 1947 the Industrial Disputes (Bombay) Rules, 1957 were made by the Government of Bombay. Interalia rule 62 of the said Rules provides for the mode and the manner of

the settlement arrived at between the employer and the workmen. Rule 62 reads thus:

> "62. **Memorandum of settlement. -** (1) A settlement arrived at in the course of the conciliation proceedings or otherwise, shall be in Form 'XVI'.
>
> (2) The settlement shall be signed by-
>
> (a) in the case of an employer, by the employer himself, or by his authorised agent, or where the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of such company or body;
>
> (b) in the case of the workmen, either by the President or Secretary or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf, or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.
>
> (3) Whether a settlement is arrived at in the course of conciliation proceedings, the Conciliation Officer or the Board, as the case may be, shall send a report thereof to the State Government together with memorandum of settlement signed by the parties to the disputes.
>
> (4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Secretary to the Government of Maharashtra, Industries and Labour Department, Bombay, the Commissioner of Labour Bombay, the Deputy Commissioner of Labour (Administration), Bombay, the Deputy Commissioner of Labour, Poona, the

Deputy Commissioner of Labour, Nagpur and the Conciliation Officer concerned. "

24. That the settlement to be legal and binding has to be in conformity with law and in accord with the mode and manner provided in rule 62 cannot be doubted. It cannot be lost sight of that the collective bargaining is very important right conferred by the Industrial Disputes Act and that right cannot be purposeful or meaningful in practice unless the settlement as contemplated by section 2(p) is with the union except the settlement that relates to the discharge, dismissal, retrenchment or termination of service of an individual workman. Save and except the individual dispute which by legal fiction is deemed to be an industrial dispute under Section 2A, for all other industrial disputes in the backdrop of the right of collective bargaining conferred by the Industrial Disputes Act and for their settlement the Union has a vital involvement and role to play. In all negotiations based on collective bargaining, the individual workman recedes in the background. The reins of bargaining on behalf of the workmen are with the Union. The Union espouses the common cause on behalf of its members. The issue of lockout is not an issue concerning an individual workman but concerns the comity of workmen

and, therefore, an individual settlement cannot have legal effect. Moreover, rule 62 provides that the settlement arrived at in the course of conciliation proceedings or otherwise shall be in form XVI. Such settlement is required to be signed in the case of the workmen, either by the President or Secretary or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf at a meeting of the workmen held for the purpose or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose. In the case in hand the settlements were not during the course of conciliation proceedings. There was no registered trade union and, therefore, the settlement to be legal and binding has to be not only in form XVI, but was also required to be signed by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose. Rule 62 is mandatory and necessarily required to be followed. The individual settlements in question are not in conformity with the mandatory provision of rule 62.

25. The submission of the learned senior counsel for the employer that the said settlements

were arrived at after the tripartite negotiations took place between the employer and the Union with the State Government and that the draft settlement was prepared as per the agreement entered into between the Union and the employer before the Chief Minister and that most of the employees had signed the settlements individually and that it was ratified by the Union and, therefore, legal and binding cannot be accepted. There is nothing on record to show that the Union ratified the individual settlements. The contention that though settlements are individual but in effect they are collective settlements because most of the employees have signed the settlements also cannot be accepted because it is admitted case of the employer that on 22nd June 1989 the employer displayed a notice for lifting out of the lockout along with the copy of the proposed settlement, but the Union did not sign the said settlement. For a legal and binding settlement relating to lockout, it has to conform to Rule 62 which the individual settlements in the case in hand do not.

26. The learned Single Judge has considered this aspect elaborately and we find ourselves in agreement with the view of the learned Single Judge.

27. Mr.P.K.Rele, the learned senior counsel relied upon the judgment of the Karnataka High Court in the case of Workmen of M/s.P.M. Madurai Moodaliar in support of his contention that a concerned workman can enter into settlement with management. That was a case of dismissal of the workman. The case was covered by Section 2A. We are concerned with the case of lock out. Interestingly, the learned Single Judge considered rule 59 of the Rules of Karnataka Industrial Rules, and held that the settlement in order that it should be binding must be in conformity with rule 59 of the Rules. That is what we have held that the settlements in order to be binding must be in conformity with rule 62 of the Industrial Disputes (Bombay) Rules, 1957.

28. The judgment of the Supreme Court in the case of M/s.Ameteep Machine Tools relied upon by Mr.Rele also does not help the case of the employer. The Supreme Court held therein that the settlement arrived at conciliation proceedings between the management and workmen themselves were binding on all those parties to the dispute even if not represented as provided in section 36(1). We hardly find relevance of the said judgment.

29. In Glass Division Kamgar Sangh (supra) the complainant in the complaint filed under MRTU & PULP Act, 1971 alleged that the settlements dated 29.07.1995 between the employer and the individual employees were illegal and the employees be reinstated with full back wages. Dealing with the said aspect, the learned Single Judge observed that there was no recognised union in the establishment of the employer and if the employer and substantially large majority of the employees had signed the settlement providing for their benefits and obligations, there was nothing in law to say that such settlement was illegal, null and void. Rule 62 of the Industrial Disputes (Bombay) Rules, 1957 was not considered by the learned Single Judge. The judgment turned on its own facts.

30. In the case of Hindustan Lever Limited v. Hindustan Lever Mazdoor Sabha (2001 I CLR 432), the judgment relied upon by Mr.Rele, it was held by the learned Single Judge of this court that when all field force employees with the exception of one or two signed the settlements continuously for five years and they received the benefits under these settlements for such a long period and they filed affidavits and requested Tribunal to pass award in

terms of settlement, it was the bounden duty of the Tribunal to have passed an award Part I in terms of the individual settlements so far as the field force employees were concerned. Here again rule 62 of the Industrial Disputes (Bombay) Rules, 1957 was neither referred nor considered. The judgment appears to have turned on the facts obtaining therein.

31. Mr.P.K.Rele, the learned senior counsel placed heavy reliance upon the judgment of the learned Single Judge of the Madras High Court in the case of The Management of Binny Ltd. We are afraid the said judgement does not help the contention of Mr.Rele. In paragraph 58 of the said judgment the learned Single Judge noticed the argument of the senior counsel for the employee that an individual could also enter into a settlement in terms of Rule 25. The judgment does not quote Rule 25. The learned senior counsel could not show us Rule 25 which was under consideration before the learned Single Judge of Madras High Court. Be that as it may, in so far as the case before us is concerned, it is governed by Rule 62 of the Industrial Disputes (Bombay) Rules, 1957 and the settlement to be binding has to be in accord and conformity with Rule 62. The judgment of the learned Single Judge of the Madras

High Court in the case of the Management of Binny Limited is also of no help.

32. We, thus, affirm the finding of the learned Single Judge that the individual settlements were not legal and valid.

33. **Re: (three)**

. Mr.Rele, the learned senior counsel for the employer submitted that even if the individual settlements are held to be not valid, then also Section 9A was not attracted because the action of the employer did not result in effecting any change in the conditions of service specified in items 1, 10 and 11 of the fourth Schedule of the Industrial Disputes Act, 1947. To appreciate this contention of the learned senior counsel, we must refer to the pleadings set out by the employer in the written statement and the evidence led by them. In the written statement, it has been repeatedly said that in order to run the factory at Sewree as a viable unit, the redeployment became necessary and that was agreed to by the individual workman in the agreement. The redeployment is to meet the business exigencies regarding the existing and new products as also to

introduction of new products/processes/technologies and improved system of work. The employer pleaded that they introduced certain new lines in the Soaps department and rescheduling of the production was in the interest of business exigencies and depending on the demand for the products and with a view to modernise and make the unit run viable it had become to remove certain machinery. The workmen had no vested right to receive incentive wages. The employer's witness in his affidavit (in lieu of examination-in-chief) stated that in the changed economic and business environment, certain operations which had become uneconomical or could not serve the specialised needs of the factory had to be discontinued; for example the printing department which used to exclusively print lifebuoy wrappers, in the changed business and economic scenario had no place in the factory as better quality of wrappers printed by advanced technology could be obtained more economically in the market. Similarly, the Engineering Profit Centre (EPC) which had become more specialised had no place in a soap factory and similarly, to make the unit viable, several other decisions were required to be taken so that the factory could be run viably and, therefore, for the reasons more particularly mentioned in clause 2 of

the settlement, the workmen agreed that the management will have a right to redeploy the workmen. As a result of redeployment about 500 workmen employed at the Sewree factory were rendered surplus. Certain lines of products were discontinued. Certain other lines of products which could be run viably were introduced. This provided employment to about 250 workmen. According to this witness, the workmen agreed to the introduction of new products/processes/mechanisation and improvement in quality, reduction in manufacturing costs, improvement in productivity, new system of working and in order to do this, certain machineries were removed and fresh machines were installed and lay out of the factory was modernised. The employer introduced voluntary retirement scheme and as a result of that 900 workmen have voluntarily separated. In his cross-examination, he admitted that except 250 employees all other employees have been redeployed. The witness admitted that surplus of the employees has resulted from discontinuation and some of the activities carried out at Sewree. He admitted that nearly about 1000 employees accepted the voluntary scheme. He admitted that the 1000 employees who were rendered surplus became surplus because of modernisation of lines, putting of higher

speed machines, discontinuation of some of the activities like development department. He also admitted that this surplus of the employees was due to reorganisation factory activities. He admitted that the employer had engaged fresh hands. He also admitted that the employer has subcontracted some of its productions like: (1) lifebuoy packing, (2) Sunlight packing and (3) Surf packing. He also admitted that some of the workmen who have been rendered surplus were skilled workmen and it was true that the skilled employees were asked to do unskilled work when they were redeployed. He also admitted that the surplus employees could not get the first incentive. He also admitted that the employees who became surplus were redeployed in Dove & Lesancy Departments. He admitted that employees working in Dove & Lesancy departments were not getting first incentive.

34. In the light of the pleadings and the evidence of the employer that we have briefly referred to above, no doubt is left that the action of the employer resulted in change of service conditions of the workmen covered by items 1, 10 and 11 of the fourth Schedule of ID Act.

35. The admitted fact that the surplus employees upon redeployment were not paid incentive clearly show that the wages of the workmen were affected and, thus, there was change in the conditions of service under item 1 of the fourth Schedule.

36. The contention that discontinuation of certain units cannot amount to rationalisation and reliance placed by him on the judgment of the learned Single Judge of this Court in the case of Alarsin and Alarsin Marketing Employees' Union (supra) is misconceived. The pleadings and the evidence of the employer would show that the employer had discontinued certain lines of products, but at the same time introduced certain other lines to make the unit more viable. It is a case of the employer that discontinuation of some of the departments was for the reason of modernisation of lines, putting of higher speed machines and reorganisation of the factory activities. The action of the employer, thus, was oriented for its reorganisation. The rationalisation, interalia, means to reorganise so as to achieve greater efficiency and economy. In the case of Alarsin and Alarsin Marketing Employees' Union, what was observed by the learned Single Judge

was that if there is a discontinuation of the process without introduction of a new or better process in its place, it would not amount to rationalisation or standardisation. The facts in the present case are entirely different. The employer's own case here is that discontinuation of some of the departments was for the reason of modernisation of lines and putting of higher speed machines. Not only that the acts of the employer in the present case amount to reorganisation and rationalisation, but the fact that the said acts resulted in large number of surplus employees, their redeployment and many of them accepted the voluntary retirement clearly indicate that such rationalisation was likely to lead to retrenchment of workmen. What is relevant is the time when the change in the conditions of service takes place due to rationalisation and likely to lead to retrenchment of the workmen and not the assurance later on that no retrenchment would take place or that no retrenchment had in fact taken place. For an act of rationalisation to be covered under item 10 of the fourth Schedule it is sufficient if such act is likely to lead to the retrenchment of workmen and not its actual happening. The evidence on record is clearly pointer to that effect.

37. We do not find substance in the submission of Mr.Rele that 'rationalisation' or 'standardisation' has to be of 'plant or technique' under item 10 of the fourth Schedule. The 'rationalisation' or 'standardisation' are not confined to 'plant or technique' in item 10. If the contention of Mr.Rele is to be accepted then item 10 has to be read as rationalisation of plant or technique or standardisation of plant or technique or improvement of plant or technique. This is not proper construction of item 10.

38. The evidence on record also clearly and amply establishes that the acts of the employer have resulted in reduction in the number of persons employed and, thus, the said acts were covered under item 11 of the fourth Schedule as well and due to that change of conditions of service notice of change under Section 9A was necessary.

39. Having taken into consideration all aspects we find ourselves in agreement with the view of the Industrial Court and the learned Single Judge that notice under Section 9A was necessarily required to be given for effecting the change of service conditions of the workmen and having not done that

they indulged in unfair labour practice under item 9 of Schedule IV of MRTU & PULP Act.

40. We may now quickly run through few other judgments cited by the learned senior counsel for the employer.

41. In the case of Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd., the question before the Supreme Court was whether the management had a right to lay-off their workmen and whether the workmen were entitled to claim wages or compensation. The Supreme Court held that the Tribunal was competent to decide the amount taking into consideration the justifiability or otherwise of a lay-off. This case has no application.

42. In the case of Federation of Small and Medium Industries & anr., the Supreme Court observed that the directions given in their judgment will govern only those parties who have not settled their claims as between themselves otherwise. We hardly find relevance of this judgment.

43. In the case of Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd., the issue before the

Supreme Court related to retrenchment of workmen and the question was whether the application of rule of last come first go under section 25G was rightly applied and whether the compliance of section 25F was made. The Supreme Court upheld the award passed by the Industrial Tribunal. This judgment hardly applies to the facts of the present case.

44. In the case of Shankar Chakravarti, the Supreme Court was dealing with the case arising out of an application seeking approval of an order of dismissal for misconduct. The enquiry was found to have been conducted in violation of principles of natural justice. The employer did not ask for opportunity to lead evidence to prove charges. The High Court granted such opportunity to the employer. Setting aside the order of the High Court, the Supreme Court observed that no duty was cast on the Tribunal suo motu to call upon the employer to adduce the evidence and the High Court committed error in granting such non-sought opportunity at the stage of letters patent appeal. The judgment has no application.

45. In the case of J.K.Iron and Steel company Ltd. the Supreme Court held that industrial

adjudication does not mean adjudication according to the strict law of master and servant. An adjudicator's award might contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law. Industrial tribunals are not fettered by these limitations. The scope of an adjudication under the Industrial Disputes Act is much wider than that of an arbitrator making an award. All the same, wide as these powers are, there are limitations to the ambit of the industrial tribunal's authority. Though these tribunals are not courts in the strict sense of the term they have to discharge quasi-judicial functions. Their powers are derived from the statute that created them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the "trappings" of a court and deprive them of arbitrary or absolute discretion and power. They cannot act as benevolent despots and base their conclusions on irrelevant considerations and ignore the real questions that arise out of the pleadings of the parties. The legal position laid down by the Supreme Court in the case of J.K. Iron & Steel company Ltd. is beyond doubt but has nothing to do with the controversy in hand.

46. In the case of S.S.Sharma in the writ petition filed under Article 32 of the Constitution of India, the Supreme Court held that Courts should restrict parties to their specific written pleadings.

47. In the case of Northbrook Jute Company, Ltd. admittedly the employer did give notice of change under section 9A of the Industrial Disputes Act for introducing scheme of rationalisation which was likely to render some of the workmen surplus and also to increase the workload.

48. In the case of the Workmen of the Food Corporation of India, the Supreme Court held that a notice of change was a must before introducing the change, otherwise it would be an illegal change.

49. In the case of D.Macropollo & Co. (Private) Ltd., the Supreme Court observed that if a reorganised scheme has been adopted by the employer for reasons of economy and convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the reorganisation scheme was adopted by the employer

bonafide or not. The Supreme Court held that in the circumstances, the industrial tribunal, considering the issue relating to retrenchment, should not attach any importance to the consequences of of reorganisation. The resulting discharge and retrenchment would have to be considered as an inevitable, though very unfortunate, consequence of the reorganised scheme, which the employer, acting bonafide was entitled to adopt. The legal position laid down by the Supreme Court is of course pertinent but needless to say that facts established in the present case clearly warranted notice under section 9A, absent the action of the employer is not saved from illegality. The decision of the Supreme Court in D.Macropollo & Co. does not apply to the facts of the present case.

50. In the case of Parry and Co. the Supreme Court held that reorganisation of business is within the managerial discretion of the employer and the bonafide reorganisation of business resulting in retrenchment of labour did not give jurisdiction to the Tribunal to go into the question as to the propriety of such reorganisation of business and the consequent discharge of surplus labour. The Supreme Court observed that profitability, economy or

convenience of the business reorganisation are matters to be decided by the employer and not by the Tribunal. It is true that profitability, economy or convenience of the business are matters to be decided by the employer but if the service conditions of the workmen because of the business reorganisation and/or rationalisation leads to likelihood of retrenchment, Section 9A has to be followed. That is the statutory requirement and cannot be done away with.

51. In the case of Hindustan Lever Employees' Union vs. State of Maharashtra & ors., (1989 II CLR 420) interalia the issue related to shifting the manufacture of one of several products from one unit to the other and the question was whether the act amounts to closure of part of undertaking with reference to section 2(cc) and 25-O. The learned Single Judge of this Court held that it did not amount to closure and the management has a right to organise its work in the manner it pleases. We hardly find application of this judgement to the contentions advanced before us.

52. In the case of Hindustan Lever Employees' Union, (1993 II CLR 847) the learned Single Judge of this Court reiterated the legal position that the

management has a right to organise its work in the manner it pleases. The transfer from one department to another may be necessitated by exigencies of trade. Such transfer cannot, therefore, amount to closure of department. We are not concerned with closure and the aforesaid judgment has no application.

53. In the case of Hindustan Lever Ltd., (1973 I LLJ 427), the Supreme Court held that rationalisation or standardisation per se would not fall under item 10 of the fourth Schedule if it is not likely to lead to retrenchment. This legal position is beyond question. The Supreme Court also held that as regards item 11, Section 9A requires notice to be given to the workmen likely to be effected by such change. It was held that the word "affected" in the circumstances could only refer to the workers being adversely affected and unless it could be shown that the abolition of one department has adversely affected the workers it cannot be brought under item 11. In the present case, the Industrial Court as well as the learned Single Judge has found, as a matter of fact, that by the action of the employer, the workers have been adversely affected and, therefore, the case was covered under

item 11. We have already upheld the said finding.

54. In Ghatge and Patil Concerns' Employment Union, the Supreme Court held that the new system did not involve exploitation of drivers and it was not a case analogous to the case of contract labour where employment of labour through a contractor or middleman put the labour at a disadvantage in collective bargaining and thus robbed labour of one of its main weapons in its armoury. The judgment has no application.

55. In the case of Shankar Pandurang Jadhav, the Supreme Court observed that the transfer outside the department entailing economic loss should be done with consent or the department should make good such economic loss which the employees are likely to suffer on transfer.

56. In the case of Gulf Air, the learned Single Judge held that under item 10 of Schedule IV the emphasis is not on rationalisation but on its likely effect on employment. In the present case likely effect on employment due to rationalisation is established.

57. In the case of Lokmat Newspapers, the Division Bench of this Court held that a combined reading of section 9A and item 10 of Schedule IV make it abundantly clear that the notice of change under section 9A in the matter of improvement of technique which is likely to lead to retrenchment of workmen has to be given prior to effecting actual improvement of technique. It will not be open to the employer to say that after actual introduction of rationalisation or improvement of technique that the employer found that it had the effect of retrenchment. We have also held that what is relevant is the point of time at which the change takes place and that change likely to lead to retrenchment and not the subsequent assertion by the employer that no retrenchment will take place.

58. In the case of Hindustan Lever Ltd. v. State of U.P. & ors. (2000 II CLR 814), the learned Single Judge of Allahabad High Court held that voluntary retirement was excluded by retrenchment and section 9A of the Industrial Disputes Act was not attracted as condition of service was not going to be changed. In the facts that have been found in the present case, section 9A is clearly attracted.

59. **Re: (four)**

. Having held that the employer was engaged in unfair labour practice under item 9 of the fourth Schedule of the Act of 1971, the declaration by the Industrial Court for discontinuation of lines in Hard Soaps department, a section of Toilet Soaps departments, Printing Department and the closure of E.P.C. (Machine Building) and the Sulphanation department is illegal cannot be faulted. Had this direction not been issued in the light of the findings given by the Industrial Court, the unfair labour practice in which the employer was engaged would be perpetuated. We overrule the contention of Mr.Rele that the direction contained in para 3 of the impugned order was not called for.

60. Before we close, we may record that we granted ample opportunity to the parties to settle the dispute amicably for good of all concerned but they failed.

61. In the result, we find no merit in the appeal and it is dismissed with costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)